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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 TRUNG MA and BETHEL MA, husband and
9 wife and the marital community composed
thereof,

10 Plaintiffs,

11 v.

12 ALLSTATE FIRE AND CASUALTY
13 INSURANCE COMPANY, a foreign
corporation,

14 Defendant.
15

CASE NO. C17-1276RSM

ORDER ON MOTIONS FOR
BIFURCATION

16 **I. INTRODUCTION**

17 This matter comes before the Court on Defendant's Motion for Limited Bifurcation (Dkt.
18 #30) and Plaintiffs' Motion Bifurcating Trial and Staying Discovery, or Alternative Relief to
19 Grant Leave for Limited Discovery (Dkt. #31). Plaintiffs brought this action seeking benefits
20 under their uninsured motorist (UIM) policy with Defendant after they were injured by an
21 automobile collision with an at-fault driver. Plaintiffs settled with the at-fault driver for available
22 policy limits, but allege they were not made whole by that settlement. Plaintiffs also pursue
23 several extra-contractual claims related to Defendant's handling of their claim. The parties agree
24 that this action should be bifurcated so that the UIM policy portion is tried independently of the
25 extra-contractual claims, but disagree as to the logistics. Plaintiffs have requested oral argument,
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1 but the Court finds oral argument unnecessary to its resolution of the pending Motions. For the
2 following reasons, the Court grants Defendant's Motion and denies Plaintiffs' Motion.

3 II. BACKGROUND

4 Plaintiffs were damaged from a collision with an at-fault driver and settled their claims
5 against the driver for the policy limits of available insurance policies. Plaintiffs contend that they
6 were not fully compensated for their damages and ultimately brought this action seeking benefits
7 under their UIM policy with Defendant and for damages related to Defendant's handling of the
8 claim. Dkt. #1-1. The action was removed to this Court on August 23, 2017. Dkt. #1. On
9 August 29, 2017, Defendant answered and prayed "[f]or bifurcation of plaintiffs' claim for UIM
10 benefits from their extra-contractual claims." Dkt. #6 at 6. After conferring, the parties filed a
11 Joint Status Report with the Court on October 6, 2017, and indicated that "Defendant may bring
12 a motion to bifurcate plaintiffs' [claims] . . . and stay discovery on the extra-contractual claims
13 until completion of the trial on the claim for UIM benefits."¹ Dkt. #9 at ¶ 4.b.

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15 On October 11, 2017, the Court issued an Order Setting Trial Dates and Related Dates
16 and required discovery to be completed by June 11, 2018. Dkt. #10. Defendant did not disclose
17 any expert witnesses related to Plaintiffs' extra-contractual claims. Dkt. #32 at 4 and Ex. 1.
18 Plaintiffs have "served no written discovery requests [and] . . . have taken no depositions." Dkt.
19 # 36 at ¶ 2; Dkt. #31 at 8 (indicating that "Plaintiffs did not believe discovery into the claim file
20 and Defendant's employees/agents was relevant to any claim or defense until after" trial on UIM
21 claims).

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23 On September 11, 2018, approximately a month before the trial date, Defendant filed its
24 Motion seeking to bifurcate trial of the issues into two phases with a jury hearing and deciding
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27 ¹ The parties also indicated: "Bifurcation. Defendant may move to bifurcate the claim for UIM
benefits from the extra-contractual claims." Dkt. #9 at ¶ 8.

1 the UIM claim and subsequently hearing and deciding Plaintiffs' extra-contractual claims. Dkt.
2 #30. On September 13, 2018, Plaintiffs filed their Motion seeking to bifurcate trial of the issues
3 into two distinct jury trials with allowance for additional discovery prior to the trial on the extra-
4 contractual claims. Dkt. #31 at 5–7. In the alternative, Plaintiffs sought leave to conduct limited
5 discovery of Defendant's claim file and to take depositions of Defendant's relevant
6 employees/agents. *Id.* at 8.

7 8 III. DISCUSSION

9 A. Bifurcation

10 Federal Rule of Civil Procedure 42(b) allows for bifurcation, providing:

11 **Separate Trials.** For convenience, to avoid prejudice, or to expedite and
12 economize the court may order a separate trial of one or more separate issues,
claims, crossclaims, counterclaims, or third-party claims. . . .

13 Fed. R. Civ. P. 42(b).

14 Under Rule 42, a court's decision whether to bifurcate is committed to its discretion.
15 *Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 962 (9th Cir. 2001). Nonetheless, separate trials are
16 the exception, not the rule, and this Court will not bifurcate without a good reason. For example,
17 bifurcation may be warranted when a first trial on relatively straightforward issues might
18 eliminate the need for a trial on more complex issues. *See Karpenski v. Am. Gen. Life Cos.*, 916
19 F. Supp.2d 1188, 1190 (W.D. Wash. 2012) (where rescission claim would dispose of the entire
20 case, determining whether a contract exists in the first place should be determined first).
21 Similarly, where a case presents one set of issues that can be conveniently tried to a jury and
22 another set that can be conveniently tried to the court, bifurcation may be appropriate. *See*
23 *Tavakoli v. Allstate Prop. & Cas. Ins. Co.*, 2012 WL 1903666, at *7 (W.D. Wash. May 25, 2012).
24 A court can also bifurcate where the evidence necessary to prove one claim poses a significant
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1 threat of confusing or prejudicing the jury as it considers other claims. *Hirst v. Gertzen*, 676 F.2d
2 1252, 1261 (9th Cir. 1982).

3 Defendant seeks limited bifurcation of the trial into two phases with the same jury first
4 deciding the UIM claim and then deciding the extra-contractual claims. Dkt. #30 at 1–2.
5 Defendant argues that such a bifurcation is necessary to avoid prejudice. *Id.* at 4–6. Defendant
6 first argues that it will “stand in the shoes” of the underinsured driver and that the driver would
7 never be forced to defend against extra-contractual claims in the trial on damages. *Id.* at 4.
8 Similarly, Defendant argues it will be prejudiced because a jury will likely focus on the evidence
9 of bad faith and Defendant’s handling of the claim as opposed to the merits of Plaintiffs’ damages
10 claims. *Id.* at 4–5 (citing state court cases finding prejudice in such a situation). Lastly,
11 Defendant also argues that the existent of insurance is generally not relevant in personal injury
12 actions and that it would necessarily be prejudiced if the jury knew insurance was involved or
13 “available.” *Id.* at 5–6.
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16 Plaintiffs seek complete bifurcation with the case proceeding to trial only on the UIM
17 claim. After a jury verdict on that claim, Plaintiffs seek to conduct discovery and have a second
18 trial on Plaintiffs’ extra-contractual claims. Dkt. #31 at 2. Plaintiffs argues that the “UIM and
19 extra-contractual claims are distinct and separable” but that the “extra-contractual claims will
20 depend on the . . . UIM trial.” *Id.* at 7. Plaintiffs also argue, without support, that bifurcation
21 would “decrease the complexity of the case, avoid prejudice, expedite the trial, and promote
22 judicial economy.” *Id.* at 7.
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24 The parties agree that bifurcation of the issues is appropriate and the Court agrees.
25 However, the Court does not believe that bifurcation into two separate trials is appropriate.
26 Plaintiffs do not attempt to establish that resolution of the UIM claim will be dispositive of the
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1 subsequent phase. *See Karpenski*, 916 F. Supp.2d at 1190. Plaintiffs also do not seek a bench
2 trail for either phase. *See Tavakoli*, 2012 WL 1903666 at *7. Nor do Plaintiffs present any
3 argument for bifurcation that is not addressed by bifurcating the issues and trying them in front
4 of the same jury.² Further, bifurcation into two phases tried to the same jury appears consistent
5 with the practice of this Court in the absence of case specific considerations. *See Estate of Hoxsey*
6 *v. Allstate Prop. and Cas. Ins. Co.*, C15-2013RSM Dkt. #16 at 5–6 (W.D. Wash. May 31, 2016)
7 (noting inefficiency of two discovery periods and two trials and noting that a single trial could
8 be divided into consecutive phases); *Hews v. State Farm Mut. Auto. Ins. Co.*, C15-834RAJ Dkt.
9 #42 at 2 (W.D. Wash. May 20, 2016) (“The court has explained in prior orders why it will not
10 impose complete bifurcation (*i.e.*, two separate trials with two separate discovery periods), but
11 will allow a modified form of bifurcation (*i.e.*, a single two-phase trial before the same jury).”).

13 **B. Discovery**

14 Plaintiffs request that if the Court bifurcates the trial into two phases before the same jury
15 that the Court grant “leave to conduct limited discovery of the claim file and depose Defendant’s
16 relevant employees and/or agents.” Dkt. #31 at 8. The discovery deadline set by the Court
17 expired more than three months before Plaintiffs filed their Motion seeking limited discovery.
18 Plaintiffs cite to Federal Rule of Civil Procedure 16 but fail to adequately address their burden
19 under that Rule. Rule 16(b)(4) provides that “[a] schedule may be modified only for good cause
20 and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4).
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24 ² The Court is not persuaded by Plaintiffs’ response to Defendant’s Motion. Dkt. #38. Plaintiffs
25 cite primarily irrelevant state court decisions. *See id.* at 6–7. But this is certainly a procedural
26 question governed by federal law. *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78–79 (1938) (federal
27 courts apply federal procedure in diversity cases); *Cook v. United States Auto. Ass’n*, 169 F.R.D.
359, 361 n.1 (D. Nev. 1996) (bifurcation is a federal procedural issue even where substantive
state law prohibited bifurcated trials).

1 Plaintiffs' main argument is that they were misled by Defendant's "repeated oral and
2 written representations" that the matter would be bifurcated and discovery stayed. Even if
3 Defendant made such representations, Plaintiffs were not reasonable in relying upon them.
4 "Federal Rule of Civil Procedure 16 is to be taken seriously." *Janicki Logging Co. v. Mateer*, 42
5 F.3d 561, 566 (9th Cir. 1994). Plaintiffs filed suit on UIM and extra-contractual claims. The
6 Court set a deadline to complete discovery. Even if Defendant and Plaintiffs had presented a
7 stipulated motion to bifurcate and stay discovery the Court would still have discretion to deny
8 the stipulated motion. More importantly, absolutely nothing prevented Plaintiffs from seeking
9 the relief desired at any time prior to the discovery deadline. *Johnson v. Mammoth Recreations,*
10 *Inc.*, 975 F.2d 604, 609 (9th Cir. 1992) ("Rule 16(b)'s 'good cause' standard primarily considers
11 the diligence of the party seeking the amendment."). Three months after the close of discovery
12 and three weeks prior to trial is not the time to seek discovery that Plaintiffs always knew was
13 relevant to their claims.
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15 IV. CONCLUSION

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17 Having reviewed the relevant pleadings, the declarations and exhibits attached thereto,
18 and the remainder of the record, the Court hereby ORDERS:

- 19 1) Defendant's Motion for Limited Bifurcation (Dkt. #30) is GRANTED.
20 2) Plaintiffs' Motion Bifurcating Trial and Staying Discovery, or Alternative Relief to
21 Grant Leave for Limited Discovery (Dkt. #31) is DENIED.

22 DATED this 1 day of October, 2018.
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25 RICARDO S. MARTINEZ
26 CHIEF UNITED STATES DISTRICT JUDGE
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